

***United States Court of Appeals
for the Second Circuit***



EXHIBITS

77-1369

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

VS.

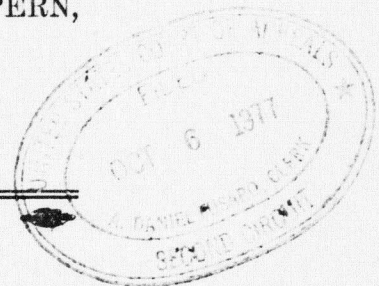
JOSEPH J. GAY,
Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK.

Exhibit Volume FOR
DEFENDANT-APPELLANT

RAICHLE, BANNING, WEISS & HALPERN,
Attorneys for Defendant-Appellant,
10 Lafayette Square,
Buffalo, New York 14203.

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
20 CENTER ST., BATAVIA, N. Y. 14020
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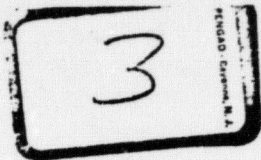
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Court Exhibit No. 3.

MEMORANDUM OF INTERVIEW

In Re: Joseph Gay
3 Fredro Street
Buffalo, N. Y. 14206
16-21-052-4-4

Date: December 28, 1971

Place: Taxpayer's Residence
3 Fredro Street
Buffalo, New York 14206

Present: Joseph Gay, Taxpayer
Warren W. Plant, Special Agent
Kenneth M. Krysztof, Special Agent

Memorandum prepared by Special Agent Krysztof.

I introduced myself and Special Agent Plant to Joseph Gay. We presented our credentials for his inspection. I then stated the following to Mr. Gay:

"As a Special Agent, one of my functions is to investigate the possibility of criminal violations of the Internal Revenue laws. In connection with my investigation of your income tax liability I would like to ask you some questions. However, first I advise you that under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding."

Gay said that he understood his rights and that I should proceed. I informed Gay that my investigation covers the years 1968, 1969 and 1970.

Tax Returns

Gay identified the following original income tax returns bearing his signature, as the returns he filed for the respective years:

<u>Form No.</u>	<u>Year</u>	<u>DLN</u>
1040	1963	16-256044035-64
1040	1965	16-256063810-66
1040	1966	16-22311060576-67
1040	1967	16-22210760245-68
1040	1968	16-22210560464-69
1040	1969	16-22211363855-70
1040	1970	16-22212800331-71

Court Exhibit No. 3.

All the above-cited returns were prepared by Francis S. Kuras, Registered Public Accountant, 34 Kopernik St., Buffalo, N. Y. The taxpayer stated that he has reported all his income and that his main source of income is from interest and dividend income, capital gains on stock transactions and a small net income from his business, Gay's Printing. He said that he has been employed by South Park Electric Company as a salesman since March 1970. He said that his only employment prior to South Park Electric Company was as a liquor salesman back in the late 1940's and early 1950's.

History

Gay said that he married his wife, Stella nee Kosowski, August 15, 1936 and that they have resided at 3 Fredro Street, Buffalo, N.Y. for about the last fifteen years. He said he was born November 25, 1914; his social security number is 106-14-2222; he completed the 8th grade at public school #69; had no military service; and his health condition is good. The taxpayer said that he has two daughters, Lorraine Russo, 3 Briar Hill Road, Orchard Park, New York and Dorothy Hobart, 1449 Eggert Road, Buffalo, New York. He said that his two daughters were married at least eight or nine years ago and neither have been his dependents since then.

Investments

The taxpayer said that he has a brokerage account with Loeb Rhodes & Co. and Shields & Co. He said that he has made numerous mortgages to friends and relatives, all of whom are listed on his income tax returns. Gay also said that he has savings accounts with Buffalo Savings Bank, Erie Federal Savings & Loan Assn. and Marine Midland Trust Company. He said that he transferred the money he had on deposit in a regular Savings account with Erie Federal Savings & Loan Assn. to a special higher interest bearing account. Gay also said that his wife has a bank bond with Erie County Savings Bank. The taxpayer said that he has not purchased or redeemed any U.S. Bonds during the investigative years.

Banking Activity

In addition to the savings accounts mentioned above, the taxpayer said that he maintains a business checking account #781-701-79-1 with Marine Midland Trust Co., Clinton & Weimar Streets in the name of "Gay's Printing" and also a safe deposit box at the same bank. He said that he does not have any cash in the safe deposit box and said that he only keeps miscellaneous papers in the box. He said that neither he nor his wife have a personal checking account. He said that he does not have any trust accounts for anyone. Gay also said that he has no loans or outstanding debts. His residence is free and clear and he has never had any judgments nor ever gone bankrupt.

Court Exhibit No. 3.

Non-Income Items

The taxpayer said that he received approximately five or six thousand dollars when his parents died a couple of years ago and that his wife received approximately \$1,800 from an insurance company as an accident award two or three years ago. He said that he has not received any other gifts, inheritances, accident awards or insurance proceeds. He also said that he has not made any gifts to anyone.

Cash on Hand

When the taxpayer was asked how much cash on hand he ever had, he replied that he did not know. He said that it would depend upon any or a combination of savings account withdrawals, mortgage payments received, proceeds or stock transactions, stock dividends received, non-income items previously mentioned and receipts from Gay's Printing. He said it would be impossible for him to recall any combination of the above-cited factors in determining cash on hand.

Gambling Activity

The taxpayer said that he is not involved in any gambling activity whatsoever. I asked Gay specifically if he printed football cards or if he took any bets regarding horse racing or individual sporting events such as football games. He replied that he did not print any football cards nor did he take any bets on football games or horseracing. He said that about ^{ten} two years ago or so he was involved a little in taking some bets but for the past ten years or so he has not.

Future Meeting

I requested that the taxpayer make available his record of mortgage receivables, to include the mortgagors involved, dates and amounts of money borrowed, dates and amounts of payments received and a breakdown of the portion applied to interest and principal on each. Also, to make available the books and records of Gay's Printing. Gay said that he does not know how much of the data he has and how much of the data his accountant has but said that he would gather the data and call me shortly after the first of the year.

Warren W. Plant
Warren W. Plant
Special Agent

Kenneth M. Kryzstof
Kenneth M. Kryzstof
Special Agent

Court Exhibit No. 4.

MEMORANDUM OF INTERVIEW

In Re: Joseph Gay
3 Fredro Street
Buffalo, New York 14206
16-21-052-4-4

Date: January 6, 1972

Place: Taxpayer's Residence
3 Fredro Street, Buffalo, NY 14206

Present: Joseph Gay, Taxpayer
Robert Wawrzyniak, Special Agent
Kenneth M. Krysztof, Special Agent

Memorandum prepared by SA Krysztof.

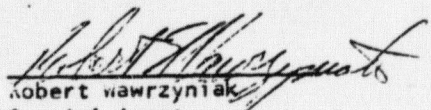
Today's meeting took place as a result of a telephone conversation with the taxpayer January 3, 1972. Joseph Gay submitted mortgage data that consisted of a separate sheet of paper for each mortgage. The taxpayer said that he made all the entries on the various sheets which consisted of dates, amount of payment, breakdown for portion applied to interest and principal and computation of remaining principal balance.

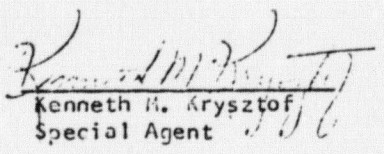
The taxpayer submitted the following mortgage data:

<u>Name of Mortgagor</u>	<u>Amount of Mortgage</u>	<u>Number of Sheets</u>
Gertrude Wisniewski	\$7,000	1
Frank & Eleanor Mazurowski	6,000	1
Stanley Toporczyk	6,000	2
Mr. & Mrs. John Bycina	10,000	1
Chester Kaczmarek	6,000	1
Edward Tokarczyk	3,500	1
Leonard & Nancy Kocol	5,000	1
Mr. & Mrs. Ted Mazur	9,000 & 2,000	2

I told the taxpayer that I would take the sheets he submitted, photocopy them at the office and return them to him Monday, January 10, 1972.

The taxpayer requested that I call him before leaving to make sure that he would be home. He said his home phone number is 826-6543.


Robert Wawrzyniak
Special Agent


Kenneth M. Krysztof
Special Agent

Court Exhibit No. 22.

MEMORANDUM OF INTERVIEW

In Re: Joseph Gay
3 Fredro Street
Buffalo, New York 14206
16-21-052-4-4

Date: January 11, 1972

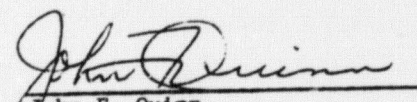
Place: Taxpayer's Residence
3 Fredro Street
Buffalo, New York 14206

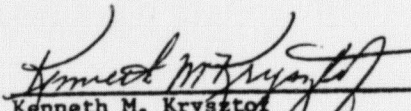
Present: Joseph Gay, Taxpayer
John F. Quinn, Special Agent
Kenneth M. Krysztof, Special Agent

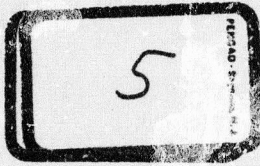
This memorandum was prepared by Special Agent Krysztof.

I introduced Special Agent Quinn to Joseph Gay. I returned the ten mortgage sheets to the taxpayer that he submitted January 6, 1972. While returning the mortgage sheets, I asked Gay how he made payments on items like real estate taxes and other larger expenses since neither he nor his wife maintain a personal checking account. He replied, "Through my business checking account."

Gay said that he will make his business checking account available.


John F. Quinn
Special Agent


Kenneth M. Krysztof
Special Agent



Court Exhibit No. 5.

MEMORANDUM OF INTERVIEW

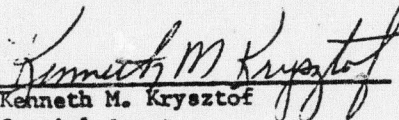
Date: June 8, 1972

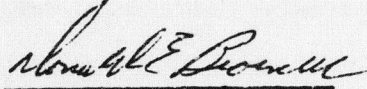
Present: Joseph Gay
Kenneth Kryzstof
Donald E. Brownell

Place: 3 Fredro Street
Buffalo, New York

Interview was conducted for the purpose of introducing Special Agent Brownell to the taxpayer and to advise the taxpayer that Brownell would be conducting the investigation in the future since Special Agent Kryzstof had been assigned to other duties.

During the interview Gay was questioned concerning cash on hand, and he stated it would never exceed \$2,000 at any time. He stated he presently had about \$300 in undeposited currency.


Kenneth M. Kryzstof
Special Agent


Donald E. Brownell
Special Agent

Court Exhibit No. 10.



MEMORANDUM OF INTERVIEW

In Re: JOSEPH AND STELLA GAY
3 Fredo Street
Buffalo, New York
16-22-052-4-4

Date: Wednesday, February 21, 1973

Time: 12:30 - 2:20 PM

Place: Room 519, Intelligence Division
111 W. Huron Street
Buffalo, New York

Present: Joseph J. Gay, Taxpayer
Ted Willis, Accountant and Tax Return Preparer
Donald E. Brownell, Special Agent
John F. Quinn, Special Agent

A Power of Attorney was submitted to Mr. Gay to be completed by him in the event that he wished representation during the remainder of the investigation. I advised Mr. Gay that the case had been transferred from Special Agent Brownell to myself; that during the course of the investigation we had attempted to obtain certain third party records relating to his financial affairs for the years 1966 through 1971; and that the purpose of the interview today was to clarify and obtain additional information regarding his financial transactions during those years. I advised Mr. Gay that if he was unsure of an answer to merely state so and I advised him further that, as had been previously stated by Special Agent Krysztof, he had the right under the Constitution to refuse to answer any question which he felt might incriminate him. Mr. Gay indicated that he understood and that he would attempt to answer all of my questions.

Regarding the preparation of his tax returns for those years, Mr. Gay stated that, for the most part, he provided his accountant at that time, Francis Kuras, with the basic information used in the preparation of the returns for 1966 through 1970. That information included Forms 1099 relating to interest income from bank accounts, and for dividends received on his stockholdings. If there was any sales of stocks or securities during the year, Mr. Gay stated that he provided Mr. Kuras with the broker's statement which would reflect the cost and the sales price for the particular securities. Regarding the Schedule C Profit and Loss Statement

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from Gay Printing, Mr. Gay stated that he provided Mr. Kuras only with a list of the income and expenses. He stated that he himself made up these lists from his receipt book and from the various invoices for expenses paid during the year. Similarly, he provided slips of paper indicating the amount of mortgage interest received by Mr. Gay on the mortgages outstanding during a particular year. He said that he made up these slips of paper from the primary mortgage records which he himself kept throughout the year. Regarding the itemized deductions, he stated that with the exception of the few estimated sales taxes, gas taxes, etc., the itemized deductions were taken mostly from his checkbook.

I showed Mr. Gay his 1971 Federal income tax return, serial number 1622212241963. He identified his signature thereon as the taxpayer and Mr. Willis identified his signature as the preparer of the return. Both Mr. Gay and Mr. Willis indicated that the same basic information and source documents were used for the preparation of the 1971 return by Mr. Willis as was used for the prior years' returns by Mr. Kuras.

Regarding life insurance premiums, Mr. Gay confirmed that he has a policy with John Hancock Life Insurance Company which is in the name of his grandson, Peter Russo. He also confirmed that he (Mr. Gay) was paying all the yearly premiums on this policy. Regarding Prudential Insurance Company, I asked Mr. Gay what type of investment he had with that company from which he was deriving interest income. He stated that he has several policies with Prudential, one of which is an annuity-type policy from which he derives the interest income. He did state that he does not receive the interest on this policy but it is reinvested by him into the contract and used to reduce part of the premiums due.

Regarding automobiles owned, Mr. Gay stated that during recent years he has only purchased one new automobile, that being in March of 1969. He purchased a new Oldsmobile from Hank Bokman Oldsmobile for which he paid cash. He stated that he did not have a trade-in, having sold his old car to "a friend" for a couple of hundred dollars.

Regarding inheritances from the estate of his father, Joseph Gay, Mr. Gay stated that, to the best of his recollection, when his father died in 1970, he inherited approximately \$6,000 from his father's estate. He explained that the executor of the will was his brother, Leonard. Mr. Gay went on to explain that the proceeds of the will, namely the \$6,000 came to him through a trust account in his name as trustee for his father which was maintained at the Buffalo Savings Bank and that the receipt of the proceeds of the

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will were documented through that account. I asked Mr. Gay if his wife Stella had ever received inheritances and he stated that, to the best of his recollection, she received a very small inheritance when her parents died in the late 40's or early 50's.

Regarding mortgages receivable I asked Mr. Gay specifically about the John Bycina mortgage and the Kaczmarek mortgage. He stated that he would have to find out the principal balance outstanding as of December 31, 1971 and would inform me of such through his accountant. Regarding the balance as of 12-31-71 for Kaczmarek, he stated that the last entry shown on the mortgage payment sheet previously provided to Special Agent Krysztof should be the ending balance as of 12-31-71 since Mr. Kaczmarek, to the best of his recollection, did not make any principal payments during the year 1970 or 1971. I asked Mr. Gay if he ever loaned money other than through mortgages, particularly in the form of personal loans, and he stated "no." I specifically asked him if he had ever made any personal loans to any members of his family and he stated "no."

As far as his operation of Gay Printing was concerned, Mr. Gay explained that he uses the Gay Printing checking account at Marine Midland Trust Company for personal as well as business income and expenses. The expenses for the printing operation were small and Mr. Gay stated that he does not specify which checks were payable for business and which were payable for personal expenditures. All the expenses of operating his house were paid from this account, as well as various other personal expenditures. He stated that there were other items of income deposited to the Gay Printing checking account in addition to printing income. He stated that he did this in order to have enough funds in the account to cover such items as personal expenditures. He stated, for example, that he might deposit mortgage proceed payments to this account. He further explained that he did not always deposit mortgage payments. He sometimes cashed them when he needed money for personal living expenses. He also on occasion deposited mortgage payments to his other accounts, namely the savings accounts at the other banks. I asked him if he had brought with him the 1971 cancelled checks and Mr. Willis responded that he had made up a check spread using as a basis the actual cancelled checks. Mr. Willis presented that check spread covering the years 1967 through 1971.

Regarding stocks and bonds I asked Mr. Gay what type of personal records he kept on his investments in common stock, preferred stock, corporate bonds, etc. and he answered that apart from the monthly statements which he receives from his brokers, Shields & Company and Loeb-Rhoades, he does not keep any personal records

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of his investment in the stock market. Since his investment in stocks and bonds was substantial, I asked him if he could estimate how much that investment was as of the end of the year 1971. Mr. Gay stated that he could not estimate it. I asked Mr. Gay if he had any idea of approximately, rounded off, how much he had invested in the stock market, either at initial cost or present fair market value and he stated he could not even estimate that.

Regarding Anchor Growth Fund, I asked him when he purchased it and how much he had invested. He stated that this was initiated in the early 60's approximately, and that it was a prepaid plan in the amount of \$1,000. He has never received any of the dividends as they are all reinvested into the plan.

Regarding his investment in the Dreyfus Fund, Mr. Gay stated that this was opened in the early 60's, again as a prepaid investment, initially \$10,000. He stated that here again he does not receive the dividend checks but they are all reinvested into the plan which increases his investment.

I advised Mr. Gay that the account ledger sheets which we had received from Shields and Company had disclosed that on November 14, 1967 he had purchased 200 shares of Niagara Mohawk stock for \$4,079.26, the ledger sheet noting "check 11-14-67." I advised him that I had been unable to locate a check from Gay Printing Company, his only checking account, and there were no savings account withdrawals. I asked him how he paid for the Niagara Mohawk stock which was noted paid by check. Mr. Gay stated that he must have paid it through a bank money order which he did frequently. I asked him where he would purchase such a money order and he said that for the most part he bought bank money orders through the Buffalo Savings Bank. I advised Mr. Gay that there was also 200 shares purchased on November 22, 1967 which did not show up on his accounts and Shields and Company or Loeb-Rhoades. I asked Mr. Gay if he had any other stockbroker account through which he would have purchased these shares. He stated that the only two brokers accounts which he had were Shields and Company and Loeb-Rhoades, which was formerly Hugh Johnson.

I asked him specifically to explain 200 shares purchased by his wife Stella of Niagara Mohawk stock on November 14, 1967, advising him that the transfer agents records and those of Loeb-Rhoades and Shields and Company did not show that purchase. He said he did not know through whom the stock was purchased, he did not know

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how much was paid for the stock, nor he did not know how much or how it was paid. Mr. Gay stated that his wife Stella did not have a separate stock account at either Loeb-Rhoades or Shields through which this stock could have been purchased. I advised him that the records of Shields and Company had disclosed that he had purchased 100 shares of US Borax stock on January 19, 1968 which was noted as paid for by "Check January 8, 1968, \$3,021.44". I asked him where the check came from and Mr. Gay again stated that it would have been a bank draft or a bank money order purchased through the Buffalo Savings Bank. I advised him that Shields and Company had delivered to him on March 28, 1968, 100 shares of US Borax stock, but that on February 24, 1969 there was a sale of 100 shares by Joseph Gay and 100 shares by Stella Gay of US Borax stock. I asked him again where Mrs. Gay would have purchased the 100 shares which was shown on the transfer agent's records as being bought in 1968 and he again stated that he did not know.

Regarding purchases of stock and bonds in general, Mr. Gay stated that on two separate occasions he did buy stock "over the counter." This involved a purchase of Aero Industries stock and International Life Insurance Company stock. He did state that one of those was bought through an agent other than Loeb-Rhoades or Shields. He also confirmed that, for the most part, when he did purchase stock, he did not hold it for any length of time in the street name but he ordinarily had it delivered and held by him or his wife personally. He stated that when he decided to sell a particular issue of stock he usually sold it through his broker, either Hugh Johnson, Loeb-Rhoades, or Shields and Company. The one exception was US Borax stock because the corporation had tendered an offer for sale or exchange of the stock and that he accepted and negotiated the sale of the stock separately, directly with US Borax Corporation. This, he stated, was handled through a bank official.

I then asked Mr. Gay questions regarding the savings accounts held in his name or in trust at the Buffalo Savings Bank. He stated that he had several trust accounts in the name of his daughters Lorraine and Dorothy and also his father, Joseph. He stated that the trust account in the name of his father was the one previously mentioned regarding the proceeds of his father's estate. I asked Mr. Gay if the money deposited to and withdrawn from the accounts in the name of his daughters Lorraine and Dorothy were his deposits and withdrawals and he confirmed that they were. None of the money into these accounts or from these accounts were from funds of either daughter. They were all his funds deposited and his funds

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withdrawn. I asked Mr. Gay if he could explain the fact that there were regular deposits of substantial amounts of currency into all of the accounts held in his name or in trust by him at the Buffalo Savings Bank. Mr. Gay stated that it could possibly be that he deposited currency from mortgage proceeds. For example, John Bycina, he stated, paid him \$1,000 in cash and occasionally Mr. Toporczyk paid him in cash. I advised him that Bycina would account for only one deposit during the year for a maximum of \$1,000 in currency. Apart from this Mr. Gay offered no further explanation on the currency deposits. He did state that occasionally he could have cashed a paycheck from South Park Electric and deposited the currency. In answer to my question, he stated that the deposits to these accounts other than currency consisted of payroll checks, dividend checks and mortgage checks.

Regarding accounts at Erie Federal Savings and Loan Association, Mr. Gay confirmed that the only two accounts which he and/or his wife had at this bank were a savings account and a time deposit account of \$12,000, which was purchased by a transfer of that amount from the savings account. He stated that he had no other accounts at this bank. I asked Mr. Gay if he ever purchased manager's checks, cashiers checks, bank drafts, or any other similar instruments through Erie Federal Savings and Loan, and he stated he did not; that, as he had previously stated, all of this type of items were purchased primarily through the Buffalo Savings Bank.

Regarding a savings certificate which was purchased in 1971 at the Erie County Savings Bank for \$10,000, Mr. Gay mentioned that he purchased this through the proceeds of the redemption of a Treasury Note. After some further discussion as to the source of this \$10,000, Mr. Gay confirmed that he had purchased a short term Treasury Note at the Federal Reserve Bank. He explained this was a short term type note as opposed to his Series H holdings of US Savings Bonds. I questioned him as to why interest was not specified on his tax returns for any years from these Treasury Notes, but he did not offer an explanation.

Regarding mortgages receivable, I asked Mr. Gay as to his normal practice for issuing the proceeds of such mortgages, citing for example the Kocol mortgage issued in 1969 for \$5,000 and the Mazurowski mortgage for \$6,000 in 1971. I asked him specifically how he issued the proceeds for these mortgages. Mr. Gay responded that he couldn't recall specifically how any of the mortgages were issued. He said it could possibly have been in cash if he had the money available, it could possibly have been a bank draft, again

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drawn through the B Kings Bank. I asked Mr. Gay specifically if he had any investments in the Park Lounge located on Clinton Street, either in the form of loans, notes, mortgages and he stated that he had no investment of any kind in the Park Lounge. I asked him specifically if he had any investments in any other taverns and he again stated no. I asked him if he had any investments in any other property, real estate or the like, mentioning specifically the Tonawanda Hospital Building, Incorporated. Mr. Gay answered that he had acquired an interest in a \$1,000 note in the Tonawanda Hospital Building, Incorporated which he had taken over from Frank Mazurowski. He stated that he had acquired this for an interest of \$900 but it was not specifically related to a later mortgage issued in the name of Frank Mazurowski. I again asked Mr. Gay if he had any investments by loans to any other individuals, firms, or corporations and he answered "none."

I then asked Mr. Gay as to his investments and municipal bonds and securities from which he was acquiring tax-free interest. He confirmed that he had investments in New York City bonds, Albany County South Mall bonds and Federal Intermediate Credit Bank bonds. He stated that the interest was received by him separately by coupon on these investments, but when I asked him as to how much he received in interest on these bonds in 1970 and 1971, Mr. Gay stated that he did not know. I asked him if he or his wife had any other investments in municipal bonds through any other banks or institutions and he stated that they did not.

On his 1969 Federal income tax return, Mr. Gay had claimed a deduction for a robbery occurring at his premises at 3 Fredo Street specifying the theft of several mink coats, diamond rings, cash and damage to properties. He explained that on that occasion in late 1969 three men had forced their way into his house, had beaten up himself and his wife, and had stolen the items listed on the tax return. He stated that he believed he knew who these individuals were, that he had occasion to later talk to one of the individuals whom he believed was one of these robbers, but was never able to prove their identity. He stated that the deduction was claimed on the tax return based on the information which he had related to Frank Kuras as to the original cost and the fair market value at the time of the robbery. He stated that part of the unreimbursed cost was due to the policy limits on thefts of cash.

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I asked Mr. Gay if he at present, or any time after this robbery in late 1969, had purchased any other luxury items such as furs or diamond rings and he stated that he did not. I asked Mr. Gay if he ever owned a boat and he stated he did not. I asked him if he had any other property, real estate, summer cottages and he stated "no." He did respond that in 1968 or 1969 he purchased a vacant lot located in West Seneca, paying approximately \$3,000 because at that time it appeared to him to be a good investment. I asked Mr. Gay specifically if he had any foreign bank accounts in Canada or foreign countries, and he stated that he did not.

Regarding a check payable to the law firm of Condon, Klocke, Ange and Gervace in 1970, Mr. Gay stated that the purpose of that check was that he had brought a legal suit in an attempt to recover an investment which he had made in the 1950's. He stated as of this time there was no recovery made on that investment. Regarding a check payable to the US Passport Office in 1970, I asked him if he ever took any foreign trips and Mr. Gay responded that in 1970 he took an excursion to Spain through the Clinton Businessmen's Association and he estimated the approximate cost at \$300. Mr. Gay stated in answer to a question that to the best of his knowledge he did not have any accounts at the United States Trust Company, located in New York City.

I asked Mr. Gay if he had any liabilities, outstanding loans, mortgages, and he stated no.

Mr. Gay confirmed that he had a safe deposit box at the Marine Midland Clinton Street Branch but for the last three years he has never used it for storage of cash. The only thing he uses it for is for storage of stocks, securities and other papers. He also claimed that several years ago he received approximately \$1800 as an insurance company settlement on an accident at which his wife suffered a broken foot. He stated that the settlement was made through Crucina Messina, an insurance agent. He stated that his own personal insurance is with Aetna and handled by Bakos and Company, located on Clinton Street.

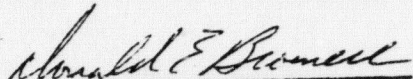
Mr. Gay estimated in response to my question that he gives his wife \$100 per week, every week for her to run the household, which includes family food expense.

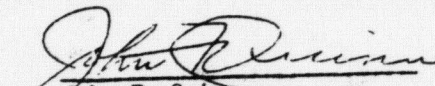
I asked Mr. Gay if he is currently involved in bookmaking activities, either through printing, distributing football pool tickets, or if he was in the business of accepting wagers. Mr. Gay responded that he was not, that he was merely a "horse player himself", that he has been accused of being in the business of bookmaking, but nobody has ever proved it. Mr. Gay stated that since 1970 he works full time, five days a week, for South Park Electric owned by the father of his son-in-law, Silvio Russo. He said he works as a salesman, mostly on the road, not in the store. He said he had no investment whatsoever in that company.

Court Exhibit No. 10.

-9-

At the conclusion of the interview, a document receipt was made up for certain security statements, monthly statements from Shields and Company, Loeb-Rhoades, and a copy was presented to Mr. Gay.


Donald E. Brownell
Special Agent


John F. Quinn
Special Agent

Court Exhibit No. 11.



MEMORANDUM OF INTERVIEW

In Re: JOSEPH J. GAY
16-22-052-4-4
16720052C

Date: May 8, 1973 Time: 10:15 A.M. - 11:20 A.M.

Place: Intelligence Division
Room 519
111 W. Huron Street
Buffalo, New York

Present: Joseph J. Gay, Taxpayer
Ted Willis, Representative
Eugene Chmura, Revenue Agent
John F. Quinn, Special Agent

The stockbroker statements submitted at the previous meeting were returned to Mr. Gay and Mr. Willis signed the "return" portion of the document receipt.

I asked Mr. Gay about the specifics of the Treasury note which he mentioned the last time. He said that after the robbery in late 1969, his wife told him about some money she had hidden away in a mattress, which the robbers didn't find. Mr. Gay said that he didn't know she had this money. He said that he told her they shouldn't have it lying around the house, so shortly after that he went to the Federal Reserve Bank on Delaware Avenue and bought a \$10,000, 7%, six month U. S. Treasury note. I asked him when exactly he bought this note advising him that his 1969 tax return showed the robbery occurring on December 17. He said that he couldn't be specific about the actual date, that it could have been before or after December 31, 1969. I asked him exactly how much money was involved and he said it was \$10,000.00 "give or take a couple of hundred", but not more than \$11,000.

Mr. Gay said that this was the only such note he ever bought. He redeemed this personally at the Erie County Savings Bank on March 11, 1971, when he bought a Savings Certificate for \$10,000. He said he gave them the Treasury note and the bank issued him the certificate. No money was involved in the transaction.

Court Exhibit No. 11.

- 2 -

Referring to the 1970 and 1971 tax returns I asked Mr. Gay why no interest income was reported on this Treasury note. He said he didn't know but it was probably because he never received a yearly statement on the interest. He said this was how he made out his returns each year, that is he took all the statements of dividends and interest to Frank Kuras and Ted Willis for 1971. I asked Mr. Willis if Mr. Gay told him of the interest on the Treasury note in 1971 and Willis said he didn't.

Regarding interest earned on municipal bonds, I asked Mr. Gay why no interest was reported on the 1970 and 1971 returns for the \$80,000 Federal Intermediate Credit Bonds. He said that he was under the impression that all the bond interest was tax-free. He said that he was told this by the people at the bank who sold him the securities. He said that he held all the bonds during 1970 and 1971 and has only redeemed the issues that have reached maturity in 1973.

Mr. Gay mentioned that he also holds Series E Savings Bonds which he purchased when he was working during the 1940's. He said he has less than \$10,000 but he had no idea of exactly how much. He also said he has never cashed any of these Series E bonds nor has he converted them to Series H.

I asked Mr. Gay about the money received from his father, Joseph Gay and I showed him a transcript of savings account number 809654 at the Buffalo Savings Bank which showed only two deposits of \$1,046.68 and \$380.34. I advised him that he had previously said that he got \$6000 from his father's estate. Mr. Gay said that the funds deposited to account 809654 were probably from one of his brothers who died, possibly Frank Gay or Florian Gay. He said that when his father died he received a check of \$1500 from his father's estate which was deposited to one of his other savings accounts. Referring to Ted Willis' transcript of the savings accounts, I told him there was a deposit of \$1500 on January 15, 1971 to one of the other savings accounts and Gay said that was probably the \$1500. He said his father died in 1969 or 1970.

I asked Mr. Gay about interest income which he reported in 1966, and 1967 from "F. Wyczalek."* Mr. Gay said that there was a personal loan of \$3000 which he made to Wyczalek -- not a mortgage -- and he repaid it in one lump sum in 1967 or 1968. He said Wyczalek at the time owned the Amber Lounge on Clinton Street.

* See footnote

Court Exhibit No. 11.

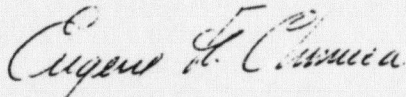
- 3 -

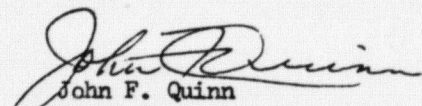
Mr. Gay said he had made a list of the total repayments of principal which he had received from 1966 through 1971 which I should consider. He read me off the following information:

<u>Name</u>	<u>Principal Amount</u>
Toporczyk	\$2700.00
Wyczalek	3000.00
Mazur	7600.00
Kaczmarek	307.00
Bycina	2305.00
Kocol	2100.00
Tokarczyk	1500.00
Wisniewski, Peter	3911.00 (1787 Clinton)
Wisniewski, Gertrude	1200.00 (Cable & Casimer)

I asked Mr. Gay about "subcontracting" expense he claimed each year on the printing business. He said that he only had a small printing press in his basement and when he got a job which was too big, he subcontracted it out to another printer and he always paid these in cash.

The interview concluded at approximately 11:20 A.M.


Eugene Chmura
Revenue Agent


John F. Quinn
Special Agent

ATTEMPT WAS MADE TO LOCATE FRANCIS X. WYCZALEK. NO RECORD
THROUGH REGULAR PUBLIC RECORDS OR NASC FILING RECORDS 1969-1972.
DEPOSIT of \$3,000.00 to MARINE ACCOUNT 781-45069-1 (EXN 32-5)
See deposit slip attached to that exhibit



Court Exhibit No. 35.

BUF-CT-21-73
JDSteele

In re: Joseph J. Gay
3 Fredro Street
Buffalo, New York 14206

MEMORANDUM OF CONFERENCE

PRESENT: For the Taxpayer: Joseph J. Gay, Taxpayer
Ted Willis, Accountant
Crucian S. Messina, Attorney

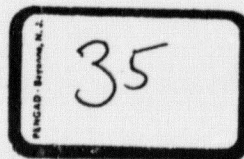
DATE: July 3, 1973

TIME: 10:00 A.M. to 11:00 A.M.

PLACE: Office of Regional Counsel
306 U.S. Courthouse
Buffalo, New York

We first explained the purpose of the conference, the recommendations of the Intelligence Division, and the civil figures for taxable income and the revised tax liability. We then noted that any information presented would be taken into consideration but cautioned that anything said could be used against Mr. Gay in the event of trial.

Mr. Willis stated that Mr. Gay was an honest taxpayer who diligently reported all of his private mortgage interest and that if there were any tax deficiencies during these years they were due to ignorance on Mr. Gay's part. He acknowledged that Mr. Gay failed to report interest on a Government bond but that this was because Mr. Gay did not believe that the interest was taxable. He stressed that Mr. Gay had cooperated with the agents fully and never earned the amounts attributed to him by the agents. The taxpayer's representatives, after being advised that the net worth method of proof was being used in this case, advised that the apparent increases in net worth were actually due to the expenditures of cash accumulated in prior years by retaining dividends and interest. The representatives refused to state the amount of cash-on-hand as of December 31, 1966.



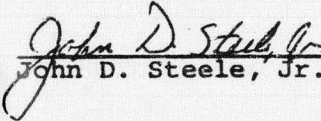
Court Exhibit No. 35.

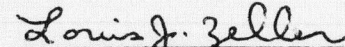
BUF-CT-21-73
JDSteele

-2-

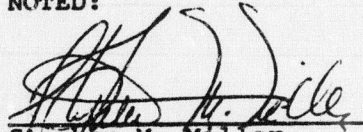
Mr. Willis, a former special agent, stated that he would not handle the accounting work for a questionable client and he explained that Mr. Gay became his client when his former accountant, Francis S. Kuras, became ill. He stressed Mr. Gay's lack of education in tax matters was responsible for any deficiencies not willfulness.

At this point the conference ended and the taxpayer and his representatives were advised that we would advise them of our determination.


John D. Steele, Jr., Attorney


Louis J. Zeller, Attorney

NOTED:


Stephen M. Miller
Assistant Regional Counsel

949

Address any reply to: 111 West Huron Street, Buffalo, N.Y. 14202

Department of the Treasury

Court Exhibit No. 27.

District Director

Internal Revenue Service

Date:

January 25, 1974

In reply refer to:

JFQ, ID:1

District Director, Internal Revenue
Service

Attn: Chief, Intelligence Division
Buffalo, New York

In Re: JOSEPH J. GAY
3 Fredro Street
Buffalo, New York 14206
16720052C (Strike Force)
16-22-052-4-4

SUPPLEMENTAL REPORT

The above-named taxpayer was the subject of an income tax investigation for the years 1967 through 1971.

My final report recommending prosecution was submitted to Regional Counsel, Buffalo, New York, on June 22, 1973 and to Department of Justice, Tax Division, on December 10, 1973. Prosecution was recommended against GAY pursuant to Section 7201 of the Internal Revenue Code of 1954 for willfully attempting to evade a substantial part of his and his wife's joint income tax for the years 1967 through 1971.

Omitted taxable income for those years was determined through an analysis of GAY's Source and Application of Funds (Expenditures Method) (Special Agent's Report, Appendix A). Also included in the SAR was a net worth statement as of December 31, 1966 (SAR, Appendix B), the opening date of the expenditures computation.

The Office of Regional Counsel, Buffalo, New York, although concurring in the recommendation for prosecution, has recommended that a supplemental investigation be conducted to corroborate the taxpayer's admission as to the amount of cash on hand on December 31, 1966.

Court Exhibit No. 27.

16720052G
16-22-052-4-4

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1. On June 28, 1972 (SAR, Exhibit 22, Memorandum of Interview), JOSEPH GAY admitted that he would not have had cash on hand in excess of \$2,000.00 at any one time.

2. Cash Available Analysis:

A. As shown on Appendix B, SAR, JOSEPH GAY's net worth as of December 31, 1966 amounted to \$242,221.92, which included an amount of cash on hand of \$2,000.00 based on the admission of the taxpayer. The other items comprising the remainder of the net worth were documented through records obtained from banks, stock-brokers and individual mortgagors (SAR, Exhibits 29 through 46).

B. In addition, the evidence available during the investigation included the 1963, 1965 and 1966 Federal income tax returns of JOSEPH and Stella GAY (SAR, Exhibits 5 through 7). No record of filing of a Federal income tax return for the year 1964 was found (SAR, Exhibit 13).

C. During the course of the investigation, we obtained a transcript of the earnings of JOSEPH J. GAY from the Social Security Administration, Baltimore, Maryland. That transcript of earnings (Exhibit 57) encompassed the years 1937 through and including 1971.

D. Based on the transcript of earnings, which is at this time the most complete and accurate record of the past earning history of JOSEPH GAY, and in addition, using the information contained on JOSEPH GAY's Federal income tax returns for the years 1963, 1965 and 1966, disclosed that his total earnings for the years 1937 through 1966 amounted to \$63,025.38. These include gross earnings by JOSEPH GAY from various employers and self-employment income from his printing business.

This analysis included only the earnings of JOSEPH GAY and does not estimate expenditures since his total gross earnings would have been completely absorbed by his net worth as of December 31, 1966 of \$242,221.92. It is apparent that during those years JOSEPH GAY and his family would have incurred at least some minimal expenditures for personal living expenses. In addition to this, he purchased a vacant lot in the late 1950's and subsequently built his present residence on that lot, and he would have had substantial expenditures in building the house.

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16720052C

16-22-052-4-4

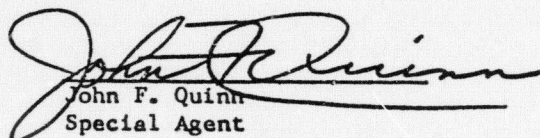
3. As further corroboration of GAY's admission of the nominal amount of cash on hand included in the opening net worth as of December 31, 1966, and as mentioned by the Criminal Reference Letter of Regional Counsel, is the fact that the taxpayer's extensive use of savings accounts, mortgages and securities would tend to corroborate that the taxpayers are people who put their money to work for them and make investments of available cash at the earliest possible opportunity. This was further corroborated during my investigation by the fact that the taxpayers promptly deposited dividend checks and the like to savings accounts upon receipt.
4. As shown on JOSEPH and Stella GAY's Federal income tax returns for the years 1965 and 1966 (SAR, Exhibits 6 and 7, respectively), JOSEPH GAY incurred an installment loan for the purchase and finance of an automobile in 1965. During that year and the year 1966, he claimed interest expense on that installment loan. Installment borrowing, such as this, has been held to be an indication to some extent of the absence of a cash accumulation.
5. Several conflicting statements regarding the issue of the amount of cash on hand were made by JOSEPH GAY and/or his representatives during the course of our investigation and the subsequent conference at Regional Counsel. At an interview on June 8, 1972 (SAR, Exhibit 22), JOSEPH GAY admitted that he would not have had cash on hand in excess of \$2,000.00 at any one time. He contradicted this statement to some extent at an interview on May 8, 1973 (SAR, Exhibit 24) when he claimed that he "discovered" that his wife had approximately \$11,000.00 on hand as of December 31, 1969 "in a mattress." Credit for this increase in cash on hand claimed was allowed in the expenditures computation. At an interview in the Office of Regional Counsel on July 3, 1973 (Exhibit 58), JOSEPH GAY and his representative, Ted Willis, and Crucian Messina, attorney, claimed that the excess expenditures were due to cash accumulated in prior years by retaining dividends and interest. At that point, they refused to state the amount of cash on hand as of December 31, 1966. While these conflicting statements made at various stages of the investigation do not in themselves corroborate the admission of cash on hand, they do tend to some extent to go to the item of willfulness.

Court Exhibit No. 27.

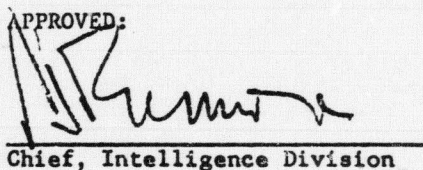
16720052C
16-22-052-4-4

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In view of the foregoing facts, I recommend that this supplemental report with exhibits be forwarded to the Department of Justice, Tax Division, through the Office of Regional Counsel, Buffalo, New York, for association with my final report and a copy be forwarded to the Assistant Regional Commissioner-Intelligence, North Atlantic Region, for his information.


John F. Quinn
Special Agent

APPROVED:


Chief, Intelligence Division

②

28 JAN 1974

Attachments:

Exhibit 57, Transcript of Earnings of JOSEPH J. GAY from the Social Security Administration.

Exhibit 58, Analysis of cash available 1937 through 1966.

Exhibit 59, Photocopy of Memorandum of Interview in the Office of Regional Counsel dated July 3, 1973.

Court Exhibit No. 27.

JOSEPH J. GAY
Buffalo, New York
16720052C
16-22-052-4-4

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Explanations and Defense of Principal	23
Facts Related to Intent	24
Conclusions and Recommendations	26
List of Exhibits	Attached
List of Witnesses	Attached

954

Address any reply to:

111 West Huron Street, Buffalo, N.Y. 14202

Department of the Treasury

Court Exhibit No. 27.



**District Director
Internal Revenue Service**

Date:

June 22, 1973

In reply refer to:

JFQ ID:1

▷ District Director, Internal Revenue
Service

Attn: Chief, Intelligence Division
Buffalo, New York 14202

In Re: JOSEPH J. GAY
3 Fredro Street
Buffalo, New York 14206
16720052C
16-22-052-4-4

Representative: Ted Willis, Accountant
1150 Broadway
Buffalo, New York 14206

FINAL

This report relates to the alleged attempt to evade income taxes for the years 1967 through 1971 by JOSEPH J. GAY (Social Security # 106-14-1222). JOSEPH GAY has listed his occupation on his individual income tax returns as a self-employed printer and salesman for a wholesale electrical sales company.

The case originated at the request of Buffalo Strike Force based on allegations that GAY was a self-employed printer who was printing and distributing football pool lottery tickets. GAY was also reportedly approached by Joseph and Nicholas Fino in 1969 and ordered by them to stop printing these football pool tickets. Several weeks later GAY was allegedly beaten up in his house and robbed of approximately \$3,300 in cash and other items. It was also alleged that GAY was operating a bookmaking operation out of the Park Lounge owned by his brother, Leonard Gay, and several other taverns located on Buffalo's East Side. It was further alleged that JOSEPH GAY's income tax returns for the years 1965 through 1969 disclosed an increase in interest and dividend income disproportionate to the amount of taxable income reported.

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16-22-052-4-4

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On the basis of the above allegations, an investigation was assigned to Special Agent Kenneth Krysztof on October 4, 1971 for the years 1968, 1969 and 1970. On June 5, 1972 the case was transferred to Special Agent Donald Brownell and then to me on August 18, 1972. Revenue Agent Eugene F. Chmura cooperated in the joint investigation. On April 11, 1973, based on the developments in the investigation to that date, permission was granted to extend the years of the investigation to include the years 1967 and 1971.

JOSEPH J. GAY was first notified that his income tax returns were under investigation by the Intelligence Division on December 28, 1971 when Special Agents Kenneth M. Krysztof and Warren W. Plant interviewed him at his home at 3 Fredro Street, Buffalo, New York.

Ted Willis, an enrolled public accountant with offices at 1150 Broadway, Buffalo, New York, filed a Power of Attorney (Exhibit 1, Photocopy) to represent JOSEPH J. and Stella GAY in the matter of their tax liability for the years 1967 through 1971.

JOSEPH GAY attempted to evade a substantial part of his and his wife's joint income tax liability for the years 1967 through 1971 by willfully understating his income tax in each year by not reporting income received from the business of accepting wagers. Due to the nature of this source of income, the computation of additional taxable income for criminal and civil purposes was determined through an analysis of his source and application of funds (expenditures computation).

JOSEPH J. GAY filed joint income tax returns for each of the years 1967 through 1971. At various interviews conducted during the investigation, he identified his signature and that of his wife on each of the returns for the years 1963 through 1971. Although joint returns were filed for each of those years, JOSEPH GAY's wife, Stella, had no independent source of income and no evidence of fraud on her part was disclosed during the investigation. Therefore, prosecution is not recommended against her.

In accordance with Section 7201 of the Internal Revenue Code of 1954, it is recommended that criminal proceedings be instituted against JOSEPH J. GAY for his willful attempt to evade a substantial part of his and his wife's joint income tax liability for the years 1967, 1968, 1969, 1970 and 1971.

Court Exhibit No. 27.

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16-22-052-4-4

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The final dates on which criminal proceedings may be instituted for each year included in the recommendation for prosecution is as follows:

<u>Year</u>	<u>Date Filed</u>	<u>Prosecution Barred After</u>	<u>Expiration Date for Civil Assessment</u>
1967	Timely	April 15, 1974	April 15, 1974 *
1968	Timely	April 15, 1975	April 15, 1975 *
1969	Timely	April 15, 1976	April 15, 1976 *
1970	Timely	April 15, 1977	April 15, 1977 *
1971	Timely	April 15, 1978	April 15, 1978 *

* Six year statute applies in accordance with Section 6501(e)(1), omission in excess of 25% of gross income.

The expiration date for the civil assessment for the year 1969 has been extended to June 30, 1974 by the execution of Form 872 signed by JOSEPH J. and Stella GAY.

JOSEPH J. GAY's place of business and residence is in Buffalo, New York. The books and records of his printing business and his banking and brokerage activities were maintained by him at his home at 3 Fredro Street, Buffalo, New York. He also conducted his bookmaking and gambling activities in the Buffalo, New York area. His tax returns were prepared by his accountants in this city. With the exception of the 1964 tax year for which no record of filing could be found, all other returns for the years 1963 through 1971 were filed with the District Director, Internal Revenue Service, Buffalo, New York, which is in the Western Judicial District of New York or the North Atlantic Service Center, Andover, Massachusetts, which is in the Judicial District of Massachusetts.

Court Exhibit No. 27.

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16-22-052-4-4

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SUMMARY OF COOPERATING OFFICERS FINDINGS

The results of the examination of JOSEPH J. GAY's tax liability, as set forth in the report of Internal Revenue Agent Eugene F. Chmura (Exhibit 2), are as follows:

TAXABLE INCOME

<u>Year</u>	<u>Per Return</u>	<u>Additional</u>	<u>Corrected</u>
1967	\$13,218.62	\$ 22,990.78	\$36,209.40
1968	12,167.98	21,901.40	34,069.38
1969	13,433.93	53,973.61	67,407.54
1970	16,537.46	50,056.84	66,594.30
1971	19,282.58	40,279.03	59,561.61
TOTAL	<u>\$74,640.57</u>	<u>\$189,201.66</u>	<u>\$263,842.23</u>

TAX

<u>Year</u>	<u>Per Return</u>	<u>Additional</u>	<u>Corrected</u>
1967	\$ 2,564.66	\$ 7,869.57	\$10,434.23
1968	2,474.65	7,818.86	10,293.51
1969	2,930.03	25,878.07	28,808.10
1970	3,495.75	22,971.86	26,467.61
1971	4,179.12	17,888.53	22,067.65
TOTAL	<u>\$15,644.21</u>	<u>\$82,426.89</u>	<u>\$98,071.10</u>

<u>Year</u>	<u>Fraud Penalty</u>	<u>Total Additional Tax and Penalties</u>
1967	\$ 3,934.79	\$ 11,804.36
1968	3,909.43	11,728.29
1969	12,939.04	38,817.11
1970	11,485.93	34,457.79
1971	8,944.27	26,832.80
TOTAL	<u>\$41,213.46</u>	<u>\$123,640.35</u>

Court Exhibit No. 27.

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16-22-052-4-4

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The only difference between taxable income for criminal and civil purposes consists of an estimated family food and personal living expense included by the Revenue Agent. These amounts, based on reliable cost of living surveys, are as follows:

<u>Year</u>	<u>Amount</u>
1967	\$3,339.78
1968	\$3,507.27
1969	\$3,758.75
1970	\$4,065.09
1971	\$4,361.63

No action has been taken with regard to the proposed civil liability.

Court Exhibit No. 27.

16720052C
16-22-052-4-4

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HISTORY OF THE TAXPAYER

JOSEPH J. GAY provided the following personal and financial background during an interview with Special Agent Kenneth Krysztof on December 28, 1971 (Exhibit 3, Memorandum). GAY stated that he was born November 25, 1914 and has lived all his life in Buffalo, New York. He completed the eighth grade in the Buffalo Public School system, has no military service, and is in good physical and mental health. JOSEPH GAY married Stella Kosowski on August 15, 1936. They have two children, Lorraine Russo and Dorothy Hobart, both of whom are married and neither of whom have been dependents for approximately eight or nine years.

Regarding his financial background, Mr. GAY stated he maintains active banking accounts with the Buffalo Savings Bank, Erie Federal Savings and Loan Association, Marine Midland Trust Company and the Erie County Savings Bank. He maintains two stockbrokerage accounts, one with Loeb Rhoades and Company and the other with Shields and Company. He also stated that he has made numerous mortgages to friends and relatives throughout the years. He derives interest income from these mortgages, all of which are listed on his income tax returns. Mr. GAY also stated that he has had no loans, mortgages or outstanding debts.

In the Evidence Section of this report, documentation relating to investments will prove that, despite his lack of formal education, JOSEPH J. GAY was a very astute investor and manager of his financial affairs. For example, at the end of the investigative period, December 31, 1971, he held a cost investment in corporate stocks and bonds of \$192,000.00; governmental and municipal securities of \$180,000.00; bank account equities of \$92,000.00 and loans outstanding to individuals of approximately \$30,000.00. With the exception of the purchase of \$157,000.00 in governmental securities in 1970, GAY was able to make substantial currency expenditures each year from funds available without reducing his existing investments.

JOSEPH GAY operated Gay Printing Company each year under investigation. He said that the operation consisted merely of a printing press in his basement and when he received an order which he thought was too big, he subcontracted it to another printer. GAY's only checking account was in the name of Gay Printing Company. In 1970, JOSEPH GAY became employed as a salesman for South Park Electric Corporation, one of the principal officers of which was his son-in-law.

Court Exhibit No. 27.

16720052C
16-22-052-4-4

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JOSEPH J. GAY's criminal record (Exhibit 4, Transcript) disclosed the following information. In 1945, he was arrested on traffic violations. On May 25, 1953, GAY was arrested for promoting gambling and for possession of a dangerous weapon. The gambling charge was dismissed and he was fined in County Court on the weapons charge.

On June 29, 1955, GAY was again arrested for promoting gambling and again the charge was dismissed. On September 24, 1961, he was arrested for disorderly conduct. This charge also was dismissed.

On November 8, 1966, JOSEPH GAY was arrested by the Buffalo Police Department on gambling charges and, in addition, for violation of the Alcoholic Beverage Control laws for violations on licensed premises. At that particular instance, JOSEPH GAY was arrested on the premises of the Park Lounge, a tavern owned by his brother, Leonard Gay. JOSEPH GAY was fined in County Court on that charge.

On June 10, 1968, GAY was again arrested by the Buffalo City Police on charges of promoting gambling and a related conspiracy violation. However, both these charges were dismissed.

As mentioned earlier in this report, in December 1969, JOSEPH GAY and his wife, Stella, were beaten and robbed in their house by three or four unidentified persons. In that connection, JOSEPH GAY was interviewed at his residence by Special Agent John G. Green of the Federal Bureau of Investigation, Buffalo Office. At that interview, GAY admitted that in October 1969 he was approached by Joseph and Nick Fino, reportedly the heads of the organized crime gambling element in the Western New York area. GAY admitted to Special Agent Green that the Finos told him to stop printing football pool tickets, presumably in competition with those being circulated by the organized gambling element. GAY stated that he told Joe and Nick Fino that he was not putting football tickets out. GAY admitted to Special Agent Green that the next week he was threatened by five individuals in front of his brother's tavern on Clinton Street and again advised to stop circulating or printing football pool tickets.

Court Exhibit No. 27.

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16-22-052-4-4

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EVIDENCEEVIDENCE IN SUPPORT OF CIVIL PENALTIES

The evidence of intent for each of the years 1967 through 1971 is the same for civil and criminal purposes.

EVIDENCE FOR USE IN CRIMINAL PROCEEDINGS

The photocopies of JOSEPH J. and Stella GAY's individual income tax returns for all available years are as follows:

<u>Year</u>	<u>Serial Number</u>	<u>Exhibit No.</u>
1963	25-6044035	5
1964	No Record	13
1965	25-6063810	6
1966	16-22311060576	7
1967	16-22210760245	8
1968	16-22210560464	9
1969	16-22211363855	10
1970	16-22212800331	11
1971	16-22212241963	12

Exhibits 13-16 contain Forms 4340, Certificates of Assessments and Payments, for the years 1964 through 1967, respectively. Exhibits 17-20 are Forms 4303, Certified Transcripts of Account, for the years 1968 through 1971.

The following is a summary of the specific sources of income and tax as reported by GAY on his 1965 through 1971 returns.

	<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
Net Business Income	\$ 440.69	\$ 215.29	\$ 183.95	\$ 100.40	\$ 720.31	\$ (132.44)	\$ (37.41)
Taxable Dividends	2,137.98	2,613.00	3,762.77	3,956.62	4,910.63	5,060.35	5,238.85
Security Transactions	287.43	656.01	4,638.08	790.86	2,099.48	496.23	-0-
Interest Income	5,500.47	6,837.03	7,329.24	10,309.83	10,275.79	7,792.44	7,979.43
Adjusted Gross Income	8,366.57	10,321.33	15,914.04	15,217.71	17,806.22	20,046.58*	23,060.87*
Taxable Income	6,023.86	7,744.60	13,218.62	12,167.98	13,433.93	16,537.46	19,282.58
Tax Liability	1,028.35	1,331.47	2,564.66	2,474.65	2,930.03	3,495.75	4,179.12

* Includes wages (W-2 income) from South Park Electric Inc., of \$7,030.00 in 1970 and \$9,880.00 in 1971.

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During this investigation, interviews were held with JOSEPH GAY on the following dates:

<u>Date</u>	<u>Exhibit Number</u>
December 28, 1971	3
January 6, 1972	21
June 8, 1972	22
February 21, 1973	23
May 8, 1973	24

At the interviews on February 21 and May 8, 1973, JOSEPH GAY was accompanied by Ted Willis, who was then representing GAY under a Power of Attorney which was submitted at the interview on February 21 (Exhibit 23).

VENUE

All of JOSEPH GAY's Federal income tax returns (Exhibits 5 through 12, Photocopies) note that, since at least 1963, he has resided at 3 Fredro Street, Buffalo, New York. All of those tax returns were identified as being prepared in Buffalo, New York by Francis Kuras and Ted Willis, licensed public accountants. In 1970 and 1971, JOSEPH GAY was employed by South Park Electric Corporation, located at 2249 South Park Avenue, in Buffalo, New York. All of the records submitted by JOSEPH GAY during the investigation were maintained by him at his home at 3 Fredro Street. All of GAY's bank transactions and brokerage accounts involve firms located in the Buffalo, New York area.

As discussed earlier, GAY was arrested on several occasions in the Buffalo, New York area. The circumstances of these arrests indicate that illegal activities by GAY took place in the Western New York area.

Venue, therefore, lies in the Western Judicial District of New York and any future criminal proceedings should take place in this District.

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BOOKS AND RECORDS

JOSEPH J. GAY was first informed that his income tax liability was under investigation by the Intelligence Division on December 28, 1971 when Special Agents Kenneth M. Kryzstof and Warren W. Plant interviewed him at his home (Exhibit 3, Memorandum of Interview). Special Agent Kryzstof presented his credentials and badge to Mr. GAY, and then he advised him as follows:

"As a Special Agent, one of my functions is to investigate the possibility of criminal violations of the Internal Revenue laws. In connection with my investigation of your income tax liability, I would like to ask you some questions. However, first I advise you that under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceedings which might be undertaken. I advise you further that you may, if you wish, seek the assistance of any attorney before responding."

In response, Mr. GAY stated that he understood his rights and that he had no objections to answering the questions.

JOSEPH GAY identified his signature on his joint income tax returns for the years 1963 through 1970 with the exception of 1964. At an interview with me on February 21, 1973 (Exhibit 23), JOSEPH GAY identified his signature on his joint income tax return for the year 1971. GAY claimed to Special Agent Kryzstof (Exhibit 3, page 2) that those tax returns reflected all of his taxable income and that his main sources of income were from interest and dividend income, capital gains on stock transactions and a small net income from his business, Gay's Printing.

At that interview JOSEPH GAY voluntarily agreed to submit various books and records relating to his income and expenses as shown on his individual income tax returns.

Subsequently, JOSEPH GAY did in fact submit to Special Agent Kryzstof the following books and records:

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<u>Description</u>	<u>Exhibit Number</u>
Cancelled checks relating to Gay's Printing	25
Bank statements for various periods relating to checking account in the name of Gay's Printing	26
Receipts book for Gay's Printing	27

He also submitted his individual mortgage repayment ledgers which will be introduced under the Source and Application of Funds later in this section.

At an interview with me on February 21, 1973 (Exhibit 23), I again advised Mr. GAY that he had the right under the Constitution to refuse to answer any questions which he felt might incriminate him. Mr. GAY again responded that he was aware of his rights. He submitted what he claimed were all the available monthly security statements from Loeb Rhoades and Company and Shields and Company. Reference to these documents will be made under the specific securities involved as shown on Exhibit 33 (Analysis and Transcript of Security Transactions) which will be introduced in the later sections of this report.

An examination of the above books and records by Revenue Agent Eugene F. Chmura disclosed that the receipts from JOSEPH GAY's printing business (Exhibit 27, Photocopy of receipts book) agree substantially with the amount of gross receipts as shown on the individual income tax returns for each of the years 1967 through 1971. With the exception of several items of interest income and dividends received from Niagara Mohawk Corporation, income reported from these sources also substantially agrees with that shown on the income tax returns.

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TAX RETURN PREPARATION

JOSEPH and Stella GAY's income tax returns for the years 1963 through 1970 (except 1964) were prepared by Francis S. Kuras, a licensed public accountant. Kuras stated (Exhibit 28, Affidavit dated May 11, 1973) that he has prepared JOSEPH and Stella GAY's income tax returns since the early sixties. He identified his signature on each of the returns for 1963 and 1965 through 1970. Kuras claimed that the information for the preparation of these returns was provided in each instance by JOSEPH GAY. All the sources of income reported were based on the information and documents GAY had given him. Kuras mentioned specifically Forms 1099 for interest income and dividend income, stockbroker statements for sales of securities, and a W-2 form for wages from South Park Electric Corporation. For interest income received from mortgages, Kuras stated that GAY had these on hand written notations showing the amounts of income received each year from the individual borrowers. Kuras admitted, however, that through inadvertence on his part, he omitted interest income received from the Bycina, Mazur and Tokarczyk mortgages from JOSEPH GAY's 1970 income tax return (Exhibit 11). Kuras stated that JOSEPH GAY gave him the income and expenses of Gay Printing Company from various slips of paper which he had with him.

Francis Kuras stated that he did not provide any recordkeeping services for JOSEPH GAY. He said that when the income tax return was completed each year, he and Mr. GAY went over the figures, as Mr. GAY was familiar with the basic information required for the Federal tax return. Mr. Kuras stated that he did not have occasion to ever compare the individual income tax returns from year to year as he only worked on one year at a time.

Kuras stated that JOSEPH GAY specifically did not inform him of interest income from Federal Intermediate Credit Bank securities, United States Treasury Notes, or from Selective Enterprises, Inc.

On February 21, 1973 (Exhibit 23, Memorandum of Interview, page 2), Ted Willis, also a licensed public accountant, identified his signature as the preparer of JOSEPH and Stella GAY's 1971 Federal income tax return. Willis confirmed that similar information and source documents were used by him for the preparation of the 1971 return, as those related by Francis Kuras.

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OMITTED INCOME

JOSEPH J. GAY was ostensibly a self-employed printer and electrical company salesman, according to his income tax returns. He also reported substantial income from dividends, bank interest and mortgage interest on each of his income tax returns. There was no indication on his joint returns for the years 1967 through 1971 of any other taxable sources of income. JOSEPH GAY and his representative submitted various books and records during the investigation. However, since the initial allegations were that GAY was in the business of accepting wagers, his corrected taxable income for those years was determined by a source and application of funds or the expenditures method.

Appendix A is a detailed statement of JOSEPH J. GAY's source and application of funds for the years 1967, 1968, 1969, 1970 and 1971. Appendix B is a computation of his net worth as of the opening date of the source and application computation, January 1, 1967. Appendices A and B also include a brief description of the evidence, the related exhibits and the names of the witnesses.

Appendix A is summarized as follows:

<u>SOURCE OF FUNDS</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>TOTAL</u>
Adjusted Gross Income	\$15,914.04	\$15,217.71	\$17,806.22	\$ 20,046.58	\$23,060.87	
(Less Non-taxable Portion of Capital Gains) *	(4,638.08)		(2,099.48)	(496.24)		
Non-taxable Dividends, etc.	1,643.04	990.86	4,229.41	1,092.47	2,668.40	
Non-taxable Interest					5,487.50	
Decreases in Bank Holdings	10,167.71	26,999.36	727.14	140,394.28	316.88	
Proceeds, Sales of Securities *	12,048.58		7,944.44			
Principal Repayments on Mortgages	2,413.15	4,496.07	2,881.15	4,228.08	7,575.50	
Insurance Proceeds				1,394.00		
Omitted Income - Interest	120.00	120.00	120.00	4,336.73	6,675.00	
Omitted Income - Dividends		590.50		2,586.00		
Funds From Parent			1,427.02			
Inheritance					1,528.68	
"Accumulated" Savings			11,000.00			
Decrease in Cash on Hand				10,000.00		
Proceeds, Sale of Treasury Note					10,000.00	
Total Sources of Funds	\$37,668.44	\$48,414.50	\$44,035.90	\$183,581.90	\$57,312.83	\$371,013.57

* Capital gains excluded since total proceeds of sales of securities are included as source of funds.

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<u>EXPENDITURES OF FUNDS</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>TOTAL</u>
Increase in Bank Holdings	\$40,681.28	\$44,221.35	\$15,038.59	\$ 12,182.84	\$54,910.56	
Purchase of Governmental Bonds				179,396.24		
Purchase of Stocks and Bonds	9,946.02	6,042.88	48,811.79	16,502.81	20,235.50	
Mutual Funds Reinvestments	1,806.98	2,016.77	3,449.29	1,585.13	751.78	
Real Property					3,000.00	
Automobile			3,719.42			
Increase in Mortgages Receivable		7,000.00	4,900.00	1,200.00	6,000.00	
Personal Living Expenses-Insurance	2,195.71	2,109.08	1,999.17	1,835.36	1,616.77	
Federal Taxes & FICA	1,081.47	3,456.26	3,286.65	3,898.89	4,174.77	
Miscellaneous	1,607.98	1,962.29	2,045.85	2,872.38	2,540.85	
Increase in Cash on Hand			11,000.00			
Purchase of Treasury Note				10,000.00		
Total Expenditures of Funds	<u>\$57,319.44</u>	<u>\$66,808.63</u>	<u>\$94,250.76</u>	<u>\$229,473.65</u>	<u>\$93,230.23</u>	<u>\$541,082.71</u>
Excess Funds Available (Omitted Income)	<u>\$19,651.00</u>	<u>\$18,394.13</u>	<u>\$50,214.86</u>	<u>\$ 45,891.75</u>	<u>\$35,917.40</u>	<u>\$170,069.14</u>

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Appendices A and B refer to Exhibits 29 through 51. Further comment here is limited to those items which require additional explanation.

(A) Evidence of Starting Point and Cash on Hand

As shown on Appendix B, as of December 31, 1966, JOSEPH GAY had a net worth of \$242,221.92. This figure includes an amount for cash on hand of \$2,000.00. At an interview with Special Agents Kenneth Kryestof and Donald Brownell on June 8, 1972 (Exhibit 22), JOSEPH GAY admitted that he would not have had cash on hand in excess of \$2,000.00 at any time. However, contrary to this previous statement, on May 8, 1973, GAY claimed (Exhibit 24) that he had approximately \$11,000.00 on or about December 31, 1969 which his wife, unknown to him, had kept "in a mattress." GAY claimed that either before or after December 31, 1969, he used \$10,000.00 of this money to purchase a U.S. Treasury Note in that face value. He claimed he could not be more specific as to the type of bond issue, date of purchase, and other pertinent details. GAY claimed that he kept this U.S. Treasury Note throughout 1970 and on March 11, 1971 he redeemed the note at the Erie County Savings Bank and was issued a savings certificate (Exhibit 32-25, Photocopy), also in the face value of \$10,000.00.

I attempted to obtain verification of the redemption of this note through the Erie County Savings Bank. However, a thorough search of the records of that bank (Exhibit 52, Statement) failed to disclose the exact instrument used by GAY to purchase the savings certificate on March 11, 1971. Officials at the Federal Reserve Bank of New York, Buffalo Branch, informed me that without the issue date, type of note, interest rate and other specific information, they would be unable to provide a record of the purchase.

Therefore, in the absence of documentation to the contrary, Appendix A allows JOSEPH GAY credit for an increase in "cash on hand" of \$11,000.00 in 1969, the purchase of a U.S. Treasury Note with this cash on hand in 1970, and the purchase of the savings certificate (Exhibit 32-25) from the Erie County Savings Bank in 1971, using the proceeds of \$10,000.00 which is according to GAY's claim.

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JOSEPH GAY was unable to explain (Exhibit 24, Memorandum of Interview, page 2) why his 1970 and 1971 income tax returns failed to disclose any interest income reported from this United States Treasury Note. Both Frank Kuras (Exhibit 28, Affidavit) and Ted Willis (Exhibit 24, Memorandum, page 2) stated that Mr. GAY never informed them of any interest income earned on a United States Treasury Note.

(B) Taxable Income Not Reported

Appendix A allows JOSEPH GAY credit for all disclosed sources of funds received during the years 1967 through 1971. This includes credit for certain items of taxable income which were not reported on his income tax returns for those years.

Francis Kuras stated (Exhibit 28, Affidavit) that he inadvertently omitted mortgage interest from three mortgages in 1970. These items amounted to \$743.00. No interest income was reported from a savings certificate at the Erie Federal Savings and Loan Association (Exhibit 32-23, Photocopy) in 1970. This amounted to \$182.84. JOSEPH GAY also received interest of \$120.00 each year (Exhibit 44, Photocopies of loan interest checks) on a \$2,000.00 loan to Selective Enterprises, Inc. GAY also failed to report interest income of \$49.00 in 1970 and \$35.00 in 1971 on a \$1,200.00 personal loan to Frank Mazurowski (Exhibit 42, Affidavit, dated May 30, 1973).

In April and October 1970, JOSEPH GAY purchased \$179,396.24 in governmental securities which included \$80,525.22 in Federal Intermediate Credit Bank bonds (Exhibit 30-1), a Federal issue, and \$98,871.02 in tax free municipal bonds (Exhibits 31-2 through 31-5). These purchases were made through William Spute of Marine Municipals Company. He testified (Exhibit 53, Affidavit) that he recalled the purchases by JOSEPH GAY. He also recalled specifically advising GAY that the interest on the Federal Intermediate Credit Bank's issue was taxable for Federal tax purposes. The other four issues being lower municipality bonds, were tax free for Federal purposes, and GAY was so advised by Spute.

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JOSEPH GAY did not report the interest on the Federal Intermediate Credit Bank bonds on his Federal income tax returns for 1970 and 1971 (Exhibits 11 and 12). As shown on Exhibit 29, this interest amounted to \$3,241.89 in 1970 and \$6,520.00 in 1971. Francis Kuras stated (Exhibit 28) that GAY did not advise him of the receipt of this interest income nor did he, in fact, advise him of any investment in the Federal Intermediate Credit Bank bonds or the other municipality bonds.

When I asked JOSEPH GAY about this omission of the interest income, he stated (Exhibit 24, page 2) that he did not know the interest was taxable. This is contrary to the specific testimony of William Spute.

In addition to these items of interest income, JOSEPH GAY also failed to report taxable dividends from Niagara Mohawk Corporation of \$590.50 in 1968 and \$2,586.00 in 1970 (Exhibit 33-19, page 2). It should be noted that Niagara Mohawk Corporation was GAY's largest single stock investment in 1970 totalling \$47,914.04.

LIKELY SOURCES OF EXCESS FUNDS EXPENDED

As shown on Appendix A, the excess of funds expended over total sources of funds for the years 1967 through 1971 amounted to \$170,069.14. It is apparent, considering the substantial excesses of funds expended, that JOSEPH GAY was receiving money from some undisclosed source.

During the course of the investigation, attempts were made to uncover all sources of nontaxable funds received. JOSEPH GAY admitted (Exhibit 3, Memorandum of Interview, page 2) that he had no loans or mortgages outstanding or any indebtedness. This was corroborated by the fact that no record of indebtedness of any kind was found in the name of JOSEPH J. and/or Stella GAY through area banks and lending institutions or through the Deed and Mortgage records of the County Clerks of Erie, Chautauque, Cattaraugus and Niagara Counties.

Consideration has been given to the receipt of nontaxable funds disclosed during the investigation as shown on Appendix A. These include in part funds received from the following sources:

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Inheritances

JOSEPH GAY claimed to Special Agent Kryestof (Exhibit 3, page 3) that he received \$5,000.00 or \$6,000.00 when his parents died a couple of years ago. That interview was held in 1971. At an interview with me on February 21, 1973 (Exhibit 23, page 2), GAY again claimed that he inherited \$6,000.00 from his father's estate and that the distribution was handled by his brother, Leonard Gay. He also stated that the verification of the receipt of these funds could be found in Buffalo Savings Bank, account # 809654 (Exhibit 32-13, Transcript). This was an account held in JOSEPH GAY's name as trustee for his father, Joseph Gaj. On May 8, 1973 (Exhibit 24, Memorandum of Interview), I advised JOSEPH GAY that that account showed only two deposits, one for \$1,046.68 and one for \$380.34, as opposed to his previous claim that he had received \$6,000.00. GAY responded that the proceeds of his father's estate must have gone into one of his other accounts.

JOSEPH GAY's brother, Leonard Gay, who handled the distributions after his father's death, stated (Exhibit 45, Memorandum of Interview) that Joseph Gaj died on April 28, 1971 and that the only distribution to JOSEPH GAY during 1971 was a check for \$1,528.68. He examined and identified a photocopy of a Buffalo Savings Bank draft # 278011, dated November 3, 1971 (Exhibit 45) in that amount and confirmed that that was the instrument representing the distribution to JOSEPH GAY. The only other distribution was \$700.00 and that occurred in 1972.

I asked Leonard Gay if he could identify the two deposits into account # 809654 (Exhibit 32-13, Transcript). He stated that a brother, Frank Gay, died in March 1969 and as a result of that death, he, Leonard, distributed to JOSEPH GAY \$1,046.68. The other deposit on August 20, 1969 of \$380.34 was a similar distribution on the death of another brother, Eugene Gay.

The records of the Surrogates Court, County of Erie, show no record of a will probated in the name of Joseph Gaj.

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Insurance Proceeds

At the interview with Special Agent Krysztof (Exhibit 3, page 3), JOSEPH GAY claimed that his wife had received \$1,800.00 for an accident injury award two or three years ago. Crucian Messina, an attorney who represented Mrs. Gay in that settlement, stated (Exhibit 54) that his records show the settlement was actually made in full in 1965.

JOSEPH GAY did receive insurance reimbursement (Exhibit 43, Photocopy of check) in 1970 of \$1,394.00 for the loss due to the theft which occurred in December 1969 and credit for this amount has been considered in GAY's source of funds as shown on Appendix A.

All nontaxable sources of funds, including tax-free interest from municipal bonds, repayment of mortgage and loan principals have been considered in the sources of funds as detailed on Appendix A.

JOSEPH GAY contended that his income tax returns for each year included all sources of taxable income. Both Francis Kuras and Ted Willis, the return preparers, stated that the returns were prepared based on information submitted by JOSEPH GAY personally, and each went over the return with him upon its completion.

Since the excess funds expended as shown on Appendix A of \$170,039.14 did not come from nontaxable sources, considering both those offered by the taxpayer and those independently discovered during the investigation, it is apparent that the excess funds expended arose from a taxable source.

JOSEPH GAY's criminal record (Exhibit 4, Transcript) verified that he has been the subject of surveillances for bookmaking activities in 1953, 1955, 1966 and 1968 and was arrested on each of those occasions for violations of the criminal gambling statutes.

Buffalo Police Detectives John DiMatteo and Ronald Christopher of the Vice and Gambling Squad, stated (Exhibit 55, Memorandum of Interview) that JOSEPH GAY has been a known bookmaker to their department since the early 1960's. He has been the subject of numerous complaints and information on his bookmaking activities. The Gambling Squad detectives have performed surveillance on JOSEPH GAY for bookmaking activities on a number of occasions resulting in his arrest on promotion of gambling violations.

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Information has also been received from confidential informants by Special Agents DiNatale and Brownell of the Intelligence Division relative to wagering activity by JOSEPH GAY.

GAY admitted to a Special Agent of the FBI that he was approached by high-ranking members of the organized gambling element to stop printing and circulating gambling pool tickets. JOSEPH GAY had the facilities to carry on such activity, since he has been a self-employed printer, operating his own press from his home.

Exhibit 56 is a computation of specific expenditures or application of funds in currency by JOSEPH GAY during the period 1967 through 1971. While not an all-inclusive analysis, it nonetheless reveals a flow of currency through GAY during that five-year period of \$169,513.82

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EXPLANATION AND DEFENSE OF PRINCIPAL

At the initial interview with Special Agent Kryzstof (Exhibit 3), JOSEPH GAY stated that all taxable income was reported on his income tax returns for the years 1967 through 1971. He denied specifically being in the business of accepting wagers.

Both his tax return preparers stated that the income tax returns for 1967 through 1971 reflected the income in specific amounts and sources as related to them by JOSEPH GAY personally.

JOSEPH GAY confirmed to me (Exhibit 23, pages 1 and 2) that the income shown on his returns for 1967 through 1971 was determined by him. He also denied (Exhibit 23, page 8) being in the business of accepting wagers.

JOSEPH GAY was cooperative during the investigation to the extent that he and his representative were available for interviews. In addition, he submitted records which were referred to in prior sections of this report.

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FACTS RELATING TO INTENT

The following facts and evidence related in the previous sections of this report bear on JOSEPH GAY's willful intent in failing to report a substantial part of his income on his and his wife's joint income tax returns.

1. A gross discrepancy of \$170,069.14 between JOSEPH GAY's reported taxable income and his corrected taxable income determined by documented evidence constitutes a vast discrepancy indicative of a consistent pattern of evasion for a five-year period. He failed to report 54% of his correct taxable income for 1967; 55% for 1968; 74% for 1969; 70% for 1970 and 60% for 1971.

It is evident that GAY intended to persist in this pattern of evasion since he omitted \$35,917.40 of his taxable income for 1971, a return which was filed five months after he was advised by Special Agent Kryzstof that he was conducting a criminal tax fraud investigation.

2. The investigation uncovered evidence of substantial amounts of omitted taxable income for each of the years 1967 through 1971. However, JOSEPH GAY's income tax returns for those years make no reference whatsoever to any additional sources of income. He did not advise his tax return preparers of any additional sources of income. He denied to Special Agent Kenneth Kryzstof and myself having any additional sources of taxable income and specifically bookmaking or gambling.

3. JOSEPH GAY has been a known bookmaker to area law enforcement agents including officers of the Buffalo Police Vice and Gambling Squad and agents of the Intelligence Division.

4. Although he maintained a checking account which he used on a regular basis to pay normal living expenses, the vast majority of the expenditures affecting omitted taxable income were by currency or bank checks.

5. JOSEPH GAY failed to report interest and dividend income from several sources.

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He omitted taxable interest from Federal Intermediate Credit Bank bonds, \$9,941.89 in 1970 and 1971, claiming that he thought it was tax free. William Spate, the account representative from Marine Municipals Company, contradicted this claim by testifying that he specifically advised GAY that the income on that particular issue was taxable for Federal income tax purposes.

JOSEPH GAY also omitted dividends of \$2,586.00 received from Niagara Mohawk Corporation on his 1970 income tax return. This was his largest single investment in stocks totalling \$47,914.04.

He also claimed he purchased a \$10,000 U.S. Treasury note which he held during 1970 and part of 1971. However, he did not inform his tax return preparers of the purchase or of the interest income earned. He also failed to inform them of interest received on a \$1,200.00 personal loan to Frank Mazurowski, and interest received on a \$2,000.00 loan to Selective Enterprises, Inc. These latter checks were specifically noted as interest payments.

All of these omissions were discovered during the investigation.

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CONCLUSIONS AND RECOMMENDATIONS

The recommendation for prosecution is based on a determination of JOSEPH GAY's source and application of funds which disclosed that he failed to report taxable income of \$170,069.14 for the years 1967, 1968, 1969, 1970 and 1971. The expenditures computation was used to determine omitted taxable income because of the nature of the source of the omitted income.

The statement of JOSEPH GAY's net worth as of December 31, 1966, the opening of the source and application of funds computation is based on the taxpayer's records which he voluntarily submitted, his income tax returns and third party witnesses. All nontaxable sources of funds disclosed during the investigation have been considered.

JOSEPH J. GAY's contention that his income tax returns reflected his complete taxable income and tax liability can be overcome not only by the proof of the omitted income, but also by the testimony of area law enforcement agents which will establish that the likely source of that omitted income was from bookmaking.

The flagrancy of the violation can be further evidenced by the fact that the omitted taxable income, \$170,069.14, over a five-year period constituted approximately 65% of GAY's corrected taxable income during that period.

JOSEPH GAY's knowledge of his financial and tax responsibility is evidenced primarily by his accumulation of net worth, particularly by his financial investments, and by his past filing history as shown on his income tax returns.

I believe that the evidence relative to the determination of the additional taxable income and the evidence of the taxpayer's willful intent as outlined in the Intent Section are sufficient for use in the criminal proceedings.

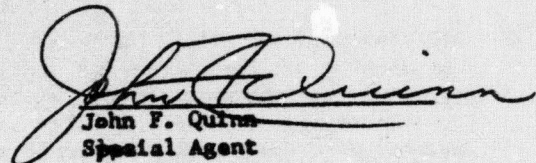
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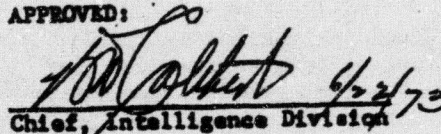
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In view of the foregoing, I recommend that criminal proceedings be instituted against JOSEPH J. GAY, Buffalo, New York, pursuant to Section 7201 of the Internal Revenue Code of 1954 for willfully attempting to evade a substantial part of his and his wife's joint income tax liabilities for the years 1967, 1968, 1969, 1970 and 1971.

I also recommend that the civil fraud penalty be asserted on the deficiency for the years 1967 through 1971.


John F. Quinn
Special Agent

APPROVED:


Chief, Intelligence Division 4-21-73

APPROVED:

Reviewer Conferee

